

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-221980 **DATE:** April 11, 1986
MATTER OF: Shaw Aero Development, Inc.

DIGEST:

Protest of alleged solicitation defects is untimely even if the protester's letter to the contracting agency is considered a protest prior to the closing date for receipt of proposals, since no protest was filed with GAO within 10 working days of closing. Where the agency does not take corrective action requested regarding solicitation defects, closing constitutes the initial adverse action on an agency-level protest.

Shaw Aero Development, Inc. (Shaw), protests the award of a contract for static dischargers to Gayston Corporation (Gayston) under request for proposals (RFP) DLA900-85-R2312, issued by the Defense Electronics Supply Center (DESC), Defense Logistics Agency, Dayton, Ohio.

We dismiss the protest.

The RFP, issued April 19, 1985, listed two manufacturers' parts numbers as approved items of supply. In a May 9 cover letter to its offer, Shaw requested that DESC reconsider the RFP's approved items because they were not able to withstand the environment of the high performance aircraft on which they were mounted. According to Shaw, the government had been buying high quantities of the discharger, and the necessity for such large quantities could only be related to the discharger's inability to remain on the aircraft. Shaw further urged that DESC consider life cycle costs, alleging that DESC was buying a low unit price item, but paying a high price considering the consumption rate. Gayston and Dayton Granger, the approved sources of supply, submitted offers by the May 20, 1985, closing date, as did Shaw and another company, which proposed their own parts as alternates. On January 27, 1986, DESC awarded a contract to Gayston, the low offeror for the quantity of 40,000 static dischargers required by the government at the time of award.

Shaw protested to our Office on February 7, contending that DESC did not properly determine the survivability of the Gayston static discharger, and that the estimated life cycle cost savings of Shaw's discharger would far exceed initial cost savings associated with Gayston's.

Neither ground of protest is timely raised. Our Bid Protest Regulations require that protests based on alleged solicitation improprieties that are apparent prior to the closing date for receipt of initial proposals must be filed before that date. 4 C.F.R. § 21.2(a)(1) (1985). Here, the RFP designated Gayston as an approved source of supply and clearly did not provide for the use of life cycle costing in evaluating offers. Thus, Shaw's protest of Gayston's status as an approved source and of DESC's failure to determine life cycle costs was required to be filed before the May 20, 1985, closing date. See Space-Lok Inc., B-204959.2, Nov. 12, 1982, 82-2 C.P.D. ¶ 436; Trident Motors Inc., B-213458, Feb. 2, 1984, 84-1 C.P.D. ¶ 142.

Even if Shaw's May 9 cover letter to its offer is considered a timely agency-level protest, Shaw's protest to our Office is still untimely. Our Bid Protest Regulations require that if a protest is filed initially with a contracting activity, a subsequent protest to this Office must be filed within 10 working days after the protester has "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3) (1985). The quoted phrase is a term of art that is construed to include knowledge that the agency proceeded with the receipt of proposals in the face of the protest. Federal Acquisition Management Training Service, B-220070, Nov. 26, 1985, 85-2 C.P.D. ¶ 604. Since Shaw's protest was filed in our Office on February 7, 1986, more than 8 months after the May 20, 1985, closing, it clearly is untimely.

Shaw contends that its protest is timely and not covered by 4 C.F.R. § 21.2(a)(1) because its contention that Gayston's static discharger is unsatisfactory is based on the rise in government requirements to 40,000 dischargers at time of award, a rate it was not aware of before the closing date. We find this contention without merit, since the RFP requested unit prices on stepladder quantities ranging from a low of 5,000 to a high of 50,000.

Shaw further contends that the issue is not whether its protest is timely, but whether the award was made in the best interests of the government and taxpayers, interests which Shaw feels were ignored by awarding a 40,000 unit contract to Gayston.

We regard bid protests as serious matters that require effective and equitable procedural standards so that all parties have a fair opportunity to present their cases and so that protests can be resolved in a reasonably speedy manner without unduly disrupting the government's procurement process. See Tracor Applied Sciences--Reconsideration, B-218051.2, April 12, 1985, 85-1 C.P.D. ¶ 422. Our strict timeliness requirements are necessary so that corrective action, if ultimately recommended, is most practicable and, thus, least burdensome on the conduct of the procurement. To waive our timeliness rules in Shaw's favor would only serve to compromise the integrity of those rules. See Hartridge Equipment Corporation--Request for Reconsideration, B-219982.2, Oct. 17, 1985, 85-2 C.P.D. ¶ 418.

The protest is dismissed.



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